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Passkey Publications Licensing Corp.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

PASSKEY PUBLICATIONS LICENSING CORP., a California Corporation,

Plaintiff,

vs.

KENVIC TRAINING, INC. a New York Corporation, KENVIC COMPANY, LLC, a New York Corporation; and DOES 1- 10,

Defendants.

17 CV 3881

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Demand for Jury Trial

Plaintiff Passkey Publications Licensing Corp. alleges as follows:

JURISDICTION AND VENUE

1. This is an action for infringement of copyright pursuant to 17 U.S.C. § 101 et seq. Subject matter jurisdiction is conferred by 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338.

2. The actions of the Defendants complained of herein took place within this jurisdiction and Defendants may be found within this judicial district. Venue is proper under 28 U.S.C. §§ 1391 and 1400(a).

FIRST CLAIM FOR RELIEF
Federal Copyright Infringement -- 17 U.S.C. §101 et seq.

3. Plaintiff Passkey Publications Licensing Corp. is a corporation organized under the laws of the state of California, with its corporate address located at 669 3rd Avenue, San Bruno, California, 94066. Plaintiff's products are regularly sold across the United States, including within the Eastern District of New York. Plaintiff creates and sells instructional books in the field of tax preparation, specifically, textbooks (EA Reviews) and workbooks (EA Workbooks) to prepare students to take the IRS EA (Enrolled Agent) exam (collectively, "Plaintiff's EA Materials"), as well as online courses including sample exams and instructional videos.

4. Upon information and belief, KENVIC TRAINING, INC. is a corporation organized under the laws of the state of New York, with its principal executive office located at 136-31 41st Avenue, Suite 7C, Flushing, New York 11355. Kenvic Training, Inc. regularly does business in the state of New York and/or its products are regularly sold in the state of New York, including within the Eastern District of New York.

5. Upon information and belief, Defendant KENVIC COMPANY LLC is a corporation organized under the laws of the state of New York, with its principal executive office also located at 136-31 41st Avenue, Suite 7C, Flushing, New York 11355. Kenvic Company LLC regularly does business in the state of New York and/or its products are regularly sold in the state of New York, including within the Eastern District of New York.

6. On information and belief, Defendants Kenvic Training, Inc. and Kenvic Company LLC are partners and/or a subsidiary or parent or affiliate of the other. As set forth above, Defendants share the same office address.

7. Defendants are engaged in the business of selling exam preparation training programs and materials, including for the EA Exam.

8. Defendants promote their EA Exam training programs and materials primarily to Korean and Chinese speaking students in the United States through several online venues and advertising programs, including their own websites, Facebook, Youtube, Vimeo, and other social media and advertising sites.

9. Plaintiff does not know the true names of the individuals, corporations, partnerships or other entities sued and identified herein as Does 1 through 10. Plaintiff alleges, upon information and belief, that these Defendants are liable to Plaintiff under the claims for relief set forth below, and requests leave of this Court to amend this Complaint when the true names of said Defendants are discovered.

10. Upon information and belief, at all times herein mentioned, each and every Defendant was acting, at least in part, as the agent, employee, and/or co-conspirator of the remaining Defendants, and in doing the things herein alleged was acting, at least in part, in the course and scope of such agency and with the permission and consent of the remaining Defendants, and in furtherance of the alleged wrongful conduct set forth in this Complaint.

11. Plaintiff, and Plaintiff's predecessors in interest, namely, Plaintiff's current sole shareholder Christine Pinheiro-Silva, dba Pineapple Press, PassKey Publications, and PassKey Publications, Inc., have created Plaintiff's EA Materials and

have continuously distributed them throughout the United States since 2008. Plaintiff is the sole owner of all rights, including copyrights, in and to the text comprising all of Plaintiff's EA Materials.

12. Applications to register Plaintiff's copyrights in all of Plaintiff's EA Reviews were filed on March 27, 2017. On June 16, 2017, Registration Certificates were issued for all of Plaintiff's EA Reviews, including, without limitation, PassKey EA Review Complete 2014-2015, Registration No. TX 8-356-518, and PassKey EA Review Complete 2015-2016, Registration No. TX 8-356-517, each with an Effective Date of March 27, 2017. True and correct copies of U.S. Copyright Registrations for all of Plaintiff's EA Materials, including, without limitation, Nos. TX 8-356-518 and TX 8-356-517, and excerpts from the deposit copies submitted with Nos. TX 8-356-518 and TX 8-356-517, are attached hereto as Exhibit A. The text comprising Plaintiff's PassKey EA Review Complete 2014-2015 and PassKey EA Review Complete 2015-2016 includes original text and revised and updated text from previous registered editions of Plaintiff's EA Materials.

13. At all times relevant hereto, all or substantially all of Plaintiff's genuine publications comprising Plaintiff's EA Materials have been marked with copyright notices claiming copyright in the name of Plaintiff or Plaintiff's predecessors in interest.

14. Plaintiff's EA Materials constitute original works of authorship created by Plaintiff or Plaintiff's predecessors in interest or assignors, and constitute copyrightable subject matter under the laws of the United States. In particular, Plaintiff's hypothetical problem scenarios are wholly fictional and therefore entitled to strong copyright protection.

15. Since June 2008, Plaintiff and Plaintiff's predecessors have promoted the EA Training Materials online, including, for example, through www.passkeypublications.com, www.eaexam.com, www.facebook.com. Plaintiff's EA Training Materials are sold online through www.amazon.com, and http://www.barnesandnoble.com.

16. Over the past five years, sales of Plaintiff's EA Materials have been steadily increasing, with total units sold as follows: in 2012, 3,755 units; in 2013, 4,860 units; in 2014, 5,132 units; in 2015, 5,817 units, and in 2016, 7,851 units. The retail price for a combined set of Plaintiff's 2016-2017 edition EA Review textbook and EA Workbook is $264.94. The textbook and workbook are also sold separately, for approximately half that price each. Plaintiff's online courses, which include sample exams and taped lectures, are available for an additional $24.95 per month.

17. On March 6, 2014, Kent Zhou sent an email from kent@kenvictraining.com to Plaintiff stating "We are starting a new EA test prep program to help 10 students pass EA SEE. We are in the process of choosing a textbook. We are considering Passkey as the textbook [sic] if we purchase 10 sets from you, How much discount could you offer? Do you have a curriculum based on the book?"

18. In follow-up email correspondence, Plaintiff advised Mr. Zhou to set up a wholesale account with one of Plaintiff's distributors. Mr. Zhou replied that Kenvic did not have a sales tax I.D. number. Plaintiff told Mr. Zhou he could purchase the books directly from Amazon or Barnes and Noble. Plaintiff also advised Mr. Zhou that if Kenvic had a valid tax ID for its school, he could purchase the books directly through the distributor Ingram.

19. In March 2014, Plaintiff also sent Mr. Zhou a free instructor's review copy of the Plaintiff's EA Review 2014-2015 edition.

20. After these communications, Plaintiff did not hear from Mr. Zhou again.

21. On information and belief, Kent Zhou is the CEO of Defendant Kenvic Training, Inc.

22. In or about January 2017, Plaintiff received information indicating that Defendants might be using EA study materials that were copied from Plaintiff's EA Materials. In or about May 2017, Plaintiff obtained copies of a study guide in the form of a 562-page pdf file that was being distributed by Defendants to Kenvic Training students, entitled "IRS Enrolled Agent Exam Review Lecture Handouts" (the "Kenvic Handout"). The Kenvic Handout includes a copyright notice in the name of Kenvic Training, Inc.

23. Upon inspection, Plaintiff discovered that the Kenvic Handout comprises extensive copies of Plaintiff's EA Review, 2014-2015 and 2015-2016 editions. The Kenvic Handout contains numerous verbatim copies of texts from Plaintiff's EA Materials, including identical copies of Plaintiff's fictional problem scenarios; as well as copies that are only slightly paraphrased, and, in some cases, copies that merely reorder Plainiff's text. As a result, the Kenvic Handout consists primarily of copies of Plaintiff's EA Materials.

24. In at least one instance, the name PASSKEY is included in a section heading within the Kenvic Handout.

25. True and correct reproductions of representative examples of Plaintiff's original texts and Defendants' copied texts are set forth in Exhibit B.

26. On information and belief, the Kenvic Handout is distributed to Defendants' students, including students in New York and within the Eastern District, as part of course packages comprising study guides and video online lectures (the "Kenvic Materials"), for a total price of approximately $1,250.00. Defendants' online lectures appear to display pages from the Kenvic Handout, and in some instances pages from Plaintiff's EA Review, apparently the 2014-2015 edition.

27. The above-described acts of reproduction, preparation of derivative works, display, distribution and sale of the Kenvic Materials constitute copyright infringement, as set forth in 17 U.S.C. § 101 et seq.

28. As a result of Defendants' acts of copyright infringement, Plaintiff is entitled to injunctive relief, and an accounting of Defendants' profits and/or Plaintiff's actual damages, and/or statutory damages, and/or attorneys' fees.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as set forth below:

(a) For an accounting and award of all of Defendants' profits derived from the acts of copyright infringement;

(b) For actual damages sustained by Plaintiff for copyright infringement;

(c) For a permanent injunction restraining Defendants from future acts of copyright infringement;

(d) For an order requiring Defendants, their agents, employees, and licensees, and all those acting under its direction and pursuant to its control, to deliver up for destruction all infringing products, and other matter employed in the creation, distribution and sale of infringing products;

(e) For costs of suit herein incurred;

(f) To the extent that any infringements have commenced or hereafter commence after the effective date of Plaintiff's copyright registrations attached as Exhibit A hereto, for statutory damages, if elected by Plainitff pursuant to 17 U.S.C. § 504, and an award of Plaintiff's reasonable attorney's fees pursuant to 17 U.S.C. § 505; and

(g) For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE LAW OFFICE OF ROBERT J. BERNSTEIN

Dated: June 27, 2017

By__________s/RJB/____________________
Robert J. Bernstein (RB 4230)

Attorneys For Plaintiff
Passkey Publications Licensing Corp.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

THE LAW OFFICE OF ROBERT J. BERNSTEIN

Dated: June 28, 2017

By__________s/RJB/____________________
Robert J. Bernstein (RB 4230)

Attorneys For Plaintiff
Passkey Publications Licensing Corp.